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11 *C. R. Bard, Inc. and*  
12 *Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

## IN RE: Bard IVC Filters Products Liability Litigation

No. 2:15-MD-02641-PHX-DGC

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFF'S  
MOTION *IN LIMINE* NO. 2 TO  
EXCLUDE EVIDENCE OF  
ALLEGED BENEVOLENT  
ACTIVITIES**

(Assigned to the Honorable David G. Campbell)

1           Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively  
 2 “Bard”) submit this response in opposition to Plaintiff’s Motion *in Limine* No. 2 and  
 3 respectfully show the Court as follows:

4           **ARGUMENT AND CITATION OF AUTHORITY**

5           Bard submits this response in opposition to Plaintiff’s Motion *in Limine* No. 2  
 6 which seeks to exclude evidence of benevolent activities by Bard.<sup>1</sup> Specifically, Bard  
 7 requests this Court deny the Plaintiff’s Motion on the grounds that the evidence sought to  
 8 be excluded is admissible background information about Bard, is relevant to rebut the  
 9 Plaintiff’s claim for punitive damages, and is vague and overbroad in its scope.

10          **A. Plaintiff’s Motion Seeks to Exclude Admissible Background Information  
 11 Concerning Bard’s Corporate Identity and Should, Therefore, Be Denied.**

12          Plaintiff, ostensibly, describes the evidence she seeks to exclude as character  
 13 evidence. Upon closer examination, however, much of the evidence is more properly  
 14 categorized as admissible background information concerning Bard’s corporate identity.

15          Plaintiff identifies the evidence she wants excluded in the highlighted portion of  
 16 Exhibit A to her motion. The highlighted portion answers the rhetorical question “Who  
 17 are the defendants?” by setting out what C.R. Bard and Bard Peripheral Vascular do  
 18 (develop and manufacture “medical devices in various fields”), describing what some of  
 19 those products are and their intended purpose (“breast cancer biopsy products to help  
 20 doctors in their diagnoses”), and noting where Bard Peripheral Vascular is located  
 21 (“Tempe”). Each of these facts is relevant and helpful in identifying “who” Bard is to the  
 22 jury.

23          This type of identifying background information is “universally” admitted as  
 24 helpful to the jury’s understanding of the parties and the case. Fed. R. Evid. 401  
 25 (Advisory Committee Notes, 1972) (“Evidence which is essentially background in nature

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26          <sup>1</sup> Bard does not intend to present evidence that it engaged in benevolent activities such as  
 27 providing scholarships or making charitable contributions. See *In re: Tylenol*  
 28 (*Acetaminophen*) *Mktg.*, No. 2436, 2016 WL 3125428, at \*11 (E.D. Pa. June 3, 2016)  
 (excluding such evidence). Thus, to the extent the Plaintiff’s motion seeks to exclude  
 such evidence, it should be denied as moot.

1     ... is universally offered and admitted as an aid to understanding."); *see also Prescott v.*  
2     *R&L Transfer, Inc.*, No. CV 3:11-203, 2015 WL 12591783, at \*1–2 (W.D. Pa. Apr. 9,  
3     2015) (denying plaintiff's motion *in limine* to exclude a description of defendant as a  
4     “family-owned business” because the information was relevant background concerning a  
5     corporate defendant, helpful to the jury in understanding who the parties in the case were,  
6     and would not confuse or mislead the jury); *Hibu, Inc. v. Peck*, No. 16-1055-JTM, 2018  
7     WL 372437, at \*3 (D. Kan. Jan. 11, 2018) (noting that “to the extent [a party]’s corporate  
8     history ... provides helpful background information to the jury, such evidence is  
9     admissible”). Thus, the Plaintiff’s Motion should be denied.

10     **B. Plaintiff’s Motion Seeks to Exclude Evidence that Is Relevant and Necessary  
11        to Rebut Plaintiff’s Punitive Damages Claims and Should, Therefore, Be  
12        Denied.**

13     In addition to the identifying background information cited above, the Plaintiff also  
14     seeks to exclude evidence concerning the quality and usefulness of Bard’s products,  
15     conscientiousness of Bard’s employees, references to Bard’s mission statement, and any  
16     mention that the purpose behind Bard’s products is to promote health and save lives.  
17     Such evidence, however, is relevant and necessary to rebut the Plaintiff’s claim for  
18     punitive damages.

19     In support of her claim for punitive damages, the Plaintiff will attempt to argue that  
20     Bard’s actions constituted willful, malicious, or reckless conduct. In order to rebut the  
21     Plaintiff’s claims, Bard intends to introduce evidence of its corporate mission statement  
22     and how it upholds that mission statement in designing and manufacturing medical  
23     devices that improve the quality of people’s lives. Such evidence is directly relevant to  
24     the conduct and intentions of Bard employees in the areas of research and development,  
25     product formulation, marketing efforts, product monitoring, and regulatory compliance.  
26     This is not character evidence. Rather, it is admissible evidence of Bard’s corporate  
27     operations instituted and executed in order to meet and exceed its duties under the law.  
28     *See In re: Tylenol (Acetaminophen) Mktg.*, No. 2436, 2016 WL 3125428, at \*11 (E.D. Pa.

1 June 3, 2016) (allowing defendants to present evidence about their operations – aimed at  
 2 improving the lives of consumers – to explain to the jury what steps were taken to meet  
 3 their statutory and common law duties”); *In re Wright Med. Tech. Inc.*, No. 1:13-CV-297-  
 4 WSD, 2015 WL 6690046, at \*3 (N.D. Ga. Oct. 30, 2015) (“Although good works, charity,  
 5 community involvement, and other good deed evidence is not evidence that is generally  
 6 admissible at trial, (see Fed.R.Evid., 404(a), 401, 402), it is conceivable, if not likely, that  
 7 Defendants’ mission statement and the manner in which it guided them in the manufacture  
 8 of hip implant devices is probative of Defendants’ intent for the purpose of the jury’s  
 9 consideration of a punitive damages award.”). As a result, the Plaintiff’s Motion should  
 10 be denied.

11 **C. Plaintiff’s Motion Is Vague and Overbroad Because It Seeks to Exclude  
 12 Unspecified Evidence and Should, Therefore, Be Denied.**

13 Finally, to the extent plaintiff seeks to exclude evidence of unspecified instances of  
 14 Bard’s “good conduct”, the Plaintiff’s Motion is vague and overbroad and should be  
 15 denied. See *In re: Tylenol (Acetaminophen) Mktg.*, 2016 WL 3125428, at \*9 (denying  
 16 plaintiff’s motion *in limine* to exclude evidence of defendants’ reputation and good acts as  
 17 vague and unclear where plaintiff failed to identify “[w]hat this information would include  
 18 and how it would be used”).

19 **CONCLUSION**

20 For these reasons, Bard respectfully requests that this Court deny the Plaintiff’s  
 21 Motion *in Limine* No. 2.

22 RESPECTFULLY SUBMITTED this 9th day of February, 2018.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of February, 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.  
Richard B. North, Jr.